

Documents tabled on 13 June 2007:

National Interest Analysis [2007] ATNIA 20

with attachment on consultation

**Protocol between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China Amending the Agreement for the Surrender of Accused and Convicted Persons of 15 November 1993
(Hong Kong, 19 March 2007)**

[2007] ATNIF 8

Background information:

**Hong Kong Special Administrative Region of the People's Republic of China political brief
and country fact sheet**

**List of other treaties with Hong Kong Special Administrative Region of the People's
Republic of China**

List of treaties of the same type with other countries

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

**Protocol between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China Amending the Agreement for the Surrender of Accused and Convicted Persons of 15 November 1993
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Nature and timing of proposed treaty action

1. The *Protocol between the Government of Australia and the Government of the Hong Kong Special Administrative Region of The People's Republic of China Amending the Agreement for the Surrender of Accused and Convicted Persons, done at Hong Kong on 15 November 1993* (the Protocol) was approved by the Executive Council on 13 December 2006, and signed in the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong) on 19 March 2007, by Australia's Consul-General to Hong Kong, Mr Murray Cobban.

2. Article 5 of the Protocol provides that the Protocol shall enter into force 30 days after the date on which the countries have notified each other in writing that their respective domestic requirements for entry into force of the Protocol have been complied with. Before Australia can provide notification, regulations need to be made under the *Extradition Act 1988* (the Act) to implement the Protocol.

Overview and national interest summary

3. Australia needs to ensure that criminals cannot evade justice by simply crossing borders. This requires a responsive, streamlined extradition system that effectively combats domestic and transnational crime, including terrorism, with appropriate safeguards.

4. Australia's extradition relationship with Hong Kong is presently governed by the *Agreement for the Surrender of Accused and Convicted Persons between the Government of Australia and the Government of Hong Kong* done at Hong Kong on 15 November 1993 [1997] ATS 11 (the Treaty). The Treaty entered into force on 29 June 1997.

5. The purpose of the Protocol is to amend Australia's existing extradition treaty with Hong Kong to provide more effective extradition arrangements. The amendments will also assist in reducing the time and resources required to process extradition requests from Hong Kong.

Reasons for Australia to take the proposed treaty action

6. The Treaty requires Australia and Hong Kong to surrender an accused or convicted person to the other country to face criminal charges or serve a sentence. This requirement is subject to certain provisions of the Treaty.

7. The Treaty, as amended by the Protocol, will modernise and provide for more effective extradition arrangements between Australia and Hong Kong. In particular, the Protocol amends the Treaty to apply the 'no evidence' standard to extradition requests from Hong Kong. This standard is an alternative to the requirement to provide a 'prima facie' case. The 'no evidence' standard does not mean no information is to be provided in support of a request. Rather it means that documents required for extradition do not need to include a brief of evidence of the alleged offence. The international trend towards simplifying extradition matters has seen a move towards the 'no evidence' standard for extradition requests. This standard is included in Australia's model treaty on extradition and the United Nations Model Treaty on Extradition. Australia has 31 modern bilateral extradition treaties which adopt the 'no evidence standard'.

8. The Protocol amends the Treaty to require Australia and Hong Kong to provide reasons to the other country in the case of complete or partial refusal of an extradition request. This will assist both States to better understand how requests are dealt with by the other and provide a basis for consultation in order to improve the efficiency of future extradition matters. This provision is also included in many of Australia's bilateral extradition treaties and the United Nations Model Treaty on Extradition.

Obligations

9. Australia and Hong Kong have agreed that the Protocol amends the Treaty, and that the two instruments should be read and interpreted together as one single instrument (Article 1).

10. Article 2 of the Protocol removes Article 5 of the Treaty, which is concerned with the standard of evidence which needs to be provided in an extradition request.

11. Article 3 of the Protocol amends Article 9(3) of the Treaty to provide for 'no evidence' extradition requests from Hong Kong to Australia. The standard of evidence for extradition requests from Australia to Hong Kong remains at a level where the information contained in the request would, in accordance with Hong Kong's domestic law, justify the extradited person's committal for trial.

12. Article 4 of the Protocol amends Article 16(1) of the Treaty to require reasons to be provided if a request for extradition is completely or partially refused.

Implementation

13. Section 11 of the Act provides that regulations may provide that the Act apply to a foreign country subject to any extradition treaty between Australia and that country. It is proposed that the Protocol amending the Treaty will be implemented by way of regulations made under the Act.

Costs

14. There will be no additional costs associated with the Protocol.

15. In accordance with the usual procedure for extradition cases, expenses incurred in extradition cases conducted under the Treaty would be met from existing budgets, primarily of

the Australian Attorney-General's Department and the Commonwealth Director of Public Prosecutions.

Regulation Impact Statement

16. The Attorney-General's Department has assessed the implementation of the Protocol through regulations under the Act against criteria in *The Best Practice Regulation Handbook*. This regulatory option has no/low impact on business and individuals or the economy and a Regulation Impact Statement or Business Cost Calculator report is not required.

Future treaty action

17. The Protocol amends the Treaty and Article 1 provides that the Treaty and the Protocol should be read and interpreted together as one single instrument. The Protocol is silent as to amendment. In the absence of an amendment provision, Article 39 of the *Vienna Convention on the Law of Treaties* would apply to allow amendment by agreement between the Parties.

18. Any modification or amendment of the Treaty or the Protocol would be subject to Australia's domestic treaty process, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties (JSCOT).

Withdrawal or denunciation

19. The Protocol does not address withdrawal or denunciation. However, the Treaty states that either Party may terminate the Treaty by giving written notice to the appropriate authority (Article 21). The Treaty (including the Protocol) will cease to be in force six months following the date of notification.

Contact details

International Legal Cooperation Section
International Crime Cooperation Division
Attorney-General's Department.

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CONSULTATIONS

1. The State and Territory Governments have been consulted through the Commonwealth-State/Territory Standing Committee on Treaties (SCOT). Information on the negotiation of the Treaty was provided to State and Territory representatives for consideration at its meetings on 27 September 2006. The Protocol has remained on the list of current and forthcoming negotiations since September 2006. No requests for further information or comments on the Protocol with Hong Kong have been received to date.

2. Negotiations with Hong Kong about the Protocol were not in the public domain as Australia follows the international practice that a bilateral treaty remains confidential to the parties until it is signed. Accordingly, no wider consultations have been conducted.

Political Brief on the Hong Kong Special Administrative Region of the People's Republic of China

Political Overview

1. Since 1 July 1997, Hong Kong has been a Special Administrative Region (SAR) of the People's Republic of China (PRC). The basis for its administration is the 1984 Sino-British Joint Declaration on the Question of Hong Kong (the 'Joint Declaration') and the Basic Law of the Hong Kong Special Administrative Region (the 'Basic Law'), which was enacted by the PRC's National People's Congress in 1990. These two instruments provide for Hong Kong to have 'a high degree of autonomy' for fifty years, except in foreign affairs and defence. This includes largely independent executive, legislative and judicial powers.

2. Hong Kong has some autonomy in foreign affairs. The Basic Law provides for Hong Kong to maintain and develop international relations in a variety of areas, mainly related to the economy. Hong Kong is party to over 200 international agreements and is a member of the World Trade Organization (WTO) and the Asia Pacific Economic Cooperation forum (APEC).

3. Under Hong Kong's 'executive-led' system, a form of government substantially inherited from the British colonial administration, the Chief Executive leads the government, assisted by an appointed Executive Council. The Chief Executive is appointed by the PRC Central Government after election by an 800-member Election Committee. The incumbent Chief Executive, Donald Tsang, was elected for a second five-year term on 25 March 2007. The Legislative Council, for which elections are held with a wider but still limited franchise, has the power to enact laws but cannot initiate financial legislation. The Basic Law provides for universal suffrage as an 'ultimate aim' but does not specify when it will be implemented.

Economic Overview

4. Gross Domestic Product grew by 6.8 per cent in real terms in 2006 to US\$192.2 billion, and growth of 4.2 per cent is predicted in 2007. Riding on China's 28.7 per cent export growth, Hong Kong's merchandise re-exports rose 10.7 per cent in 2006, while services exports rose 11 per cent, reflecting strong offshore trade and inbound tourism, particularly from mainland China. The strong economic performance ended nearly six years of deflation.

Bilateral Overview

5. Australia has a close relationship with Hong Kong. Approximately 55,000 Australians live in Hong Kong, while about 90,000 people of Hong Kong descent live in Australia. The Australian business community in Hong Kong is well-organised and active. Education and tourism are strengthening these connections: Hong Kong is Australia's fourth-largest source of students and our tenth-largest source of tourists.

6. Despite its relatively small population of 6.9 million, Hong Kong was Australia's 12th largest goods export market (\$3.15 billion) and 7th largest services market (\$1.63 billion) in 2006. Australia had a \$1.49 billion goods trade surplus with Hong Kong and a \$61 million services deficit.

7. Australian and Hong Kong Ministers have frequent contact, including in the WTO and APEC. Excellent relations at ministerial level are replicated by close day-to-day cooperation at officials level, for instance on multilateral trade and economic issues, law enforcement and aviation. The openness and transparency of Hong Kong's economy, legal system and public administration means that individuals and the private business sector have less need to rely on Australian government assistance than in most other economies.



HONG KONG

Special Administrative Region
of The People's Republic of China

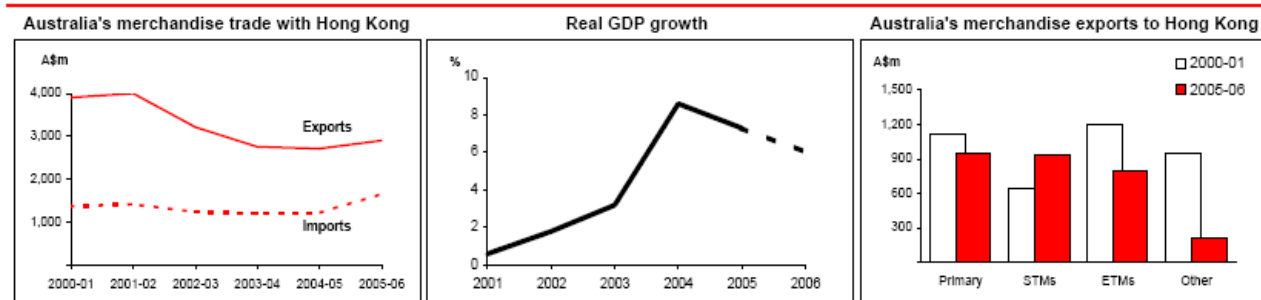
Fact Sheet

General information:

Fact sheets are updated biannually; May and September

Capital:	Hong Kong	Head of State:	H.E. President Mr Hu Jintao
Surface area:	1 thousand sq km	Head of Government:	Chief Executive The Hon Donald Tsang Yam-kuen
Official languages:	Chinese, English		
Population:	7.0 million (2005)		
Exchange rate:	A\$1 = HK\$5.8366 (July 2006)		

Recent economic indicators:	2001	2002	2003	2004	2005(a)	2006(b)
GDP (US\$bn) (current prices):	166.5	163.7	158.5	165.8	177.7	188.7
GDP PPP (US\$bn) (c):	176.8	183.3	193.0	214.2	233.4	249.0
GDP per capita (US\$):	24,638	24,124	23,150	23,980	25,493	26,824
GDP per capita PPP (US\$) (c):	26,154	27,007	28,197	30,970	33,479	35,396
Real GDP growth (% change YOY):	0.6	1.8	3.2	8.6	7.3	6.0
Current account balance (US\$m):	9,785	12,412	16,469	15,728	20,276	16,431
Current account balance (% GDP):	5.9	7.6	10.4	9.5	11.4	8.7
Goods & services exports (% GDP):	139.3	149.6	171.1	190.2	197.9	207.1
Inflation (% change YOY):	-1.6	-3.0	-2.6	-0.4	0.9	2.3



Australia's trade relationship with Hong Kong (d):

Australian merchandise trade with Hong Kong, 2005-06:	Total share:	Rank:	Growth (yoy):
Exports to Hong Kong (A\$m):	1.9%	12th	7.0%
Imports from Hong Kong (A\$m):	1.0%	20th	36.5%
Total trade (exports + imports) (A\$m):	1.4%	17th	16.1%

Major Australian merch. exports, 2005-06 (A\$m):

Crustaceans	344
Zinc	334
Aluminium	249
Pearls and gems	183

Major Australian merch. imports, 2005-06 (A\$m):

Non-monetary gold	264
Telecommunications equipment	116
Jewellery	80
Printed matter	68

Australia's trade in services with Hong Kong, 2005-06:

	Total share:
Exports of services to Hong Kong (A\$m):	3.8%
Imports of services from Hong Kong (A\$m):	3.9%

Major Australian service exports, 2005-06 (A\$m):

Education-related travel	600
Personal travel excl. education	330

Major Australian service imports, 2005-06 (A\$m):

Transportation	799
Personal travel excl. education	315

Hong Kong's global merchandise trade relationships:

Hong Kong's principal export destinations, 2005:

1	China	44.6%
2	United States	15.9%
3	Japan	5.2%
11	Australia	1.2%

Hong Kong's principal import sources, 2005:

1	China	44.1%
2	Japan	11.4%
3	Taiwan	7.4%
18	Australia	0.6%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a) all recent data subject to revision; (b) IMF/EIU forecast; (c) PPP is purchasing power parity; (d) Total may not add due to rounding.

List of other treaties with the Hong Kong Special Administrative Region of The People's Republic of China

<ul style="list-style-type: none">• Agreement with the Government of Hong Kong concerning Air Services [1993] ATS 28
<ul style="list-style-type: none">• Agreement with Hong Kong concerning the Promotion and Protection of Investments [1993] ATS 30
<ul style="list-style-type: none">• Agreement for the Surrender of Accused and Convicted Persons with the Government of Hong Kong [1997] ATS 11
<ul style="list-style-type: none">• Agreement with the Government of Hong Kong Concerning Mutual Legal Assistance in Criminal Matters [1999] ATS 20
<ul style="list-style-type: none">• Agreement with the Government the Hong Kong Special Administrative Region of the People's Republic of China concerning the Transfer of Sentenced Persons [2006] ATS 13

June 2007.

List of extradition treaties with other countries

KEY	<i>Legislation or regulation bringing treaty with (Country name) into force under domestic law.</i>	
	Treaty name done at [place], on [date signed by Australia].	[Date treaty entered into force]
1.	<i>Extradition (Republic Of Argentina) Regulations</i>	
	Treaty on extradition between the Government of Australia and the Government of the Republic of Argentina done at Buenos Aires on 6 October 1988 [1990] ATS 4	15/2/1990
2.	<i>Extradition (Republic Of Austria) Regulations</i>	
	Treaty between Australia and the Republic of Austria concerning extradition done at Canberra on 29 March 1973 [1975] ATS 16	6/2/1975
	Protocol between Australia and the Republic of Austria amending the treaty concerning extradition done at Canberra on 29 March 1973, done at Vienna on 13 August 1985 [1987] ATS 6	1/2/1987
3.	<i>Extradition (Kingdom Of Belgium) Regulations</i>	
	Treaty on extradition between Australia and the Kingdom of Belgium done at Brussels on 4 September 1985 [1986] ATS 24	19/11/1986
4.	<i>Extradition (Federative Republic Of Brazil) Regulations</i>	
	Treaty on extradition between Australia and the Federative Republic of Brazil done at Canberra on 22 August 1994 [1996] ATS 15	1/9/1996
5.	<i>Extradition (Republic Of Chile) Regulations</i>	
	Treaty on extradition between Australia and the Republic of Chile done at Canberra on 6 October 1993 [1996] ATS 7	13/1/1996
6.	<i>Extradition (Republic Of Ecuador) Regulations</i>	
	Treaty on extradition between the Government of Australia and the Government of the Republic of Ecuador done at Quito on 13 October 1988 [1990] ATS 19	1/08/1990

7.	<i>Extradition (Finland) Regulations</i>	
	Treaty between Australia and Finland concerning extradition done at Helsinki on 7 June 1984 [1985]ATS 23	23/6/1985
	Protocol between Australia and Finland amending the treaty concerning extradition done at Helsinki on 7 June 1984, done at Helsinki on 10 September 1985 [1987] ATS 23	14/2/1986
8.	<i>Extradition (Republic Of France) Regulations</i>	
	Treaty on extradition between the Government of the Republic of France and the Government of Australia done at Canberra on 31 August 1988 [1989] ATS 27	23/11/1989
9.	<i>Extradition (Federal Republic of Germany) Regulations</i>	
	Treaty between Australia and the Federal Republic of Germany concerning extradition done at Bonn on 14 April 1987 [1990] ATS 21	1/8/1990
10.	<i>Extradition (Hellenic Republic) Regulations (Greece)</i>	
	Treaty on extradition between Australia and the Hellenic Republic done at Athens on 13 April 1987 [1991]ATS 27	5/7/1991
11.	<i>Extradition (Hong Kong) Regulations</i>	
	Agreement for the surrender of accused and convicted persons between the government of Australia and the Government of Hong Kong done at Hong Kong on 15 November 1993 [1997] ATS 11	29/6/1997
	Protocol between the Government of Australia and the Government of the Hong Kong Special Administrative Region of The People's Republic of China Amending the Agreement for the Surrender of Accused and Convicted Persons of 15 November 1993 91 done at Hong Kong 19 March 2007 [2007] ATNIA 8	
12.	<i>Extradition (Republic Of Hungary) Regulations</i>	
	Treaty on extradition between Australia and the Republic of Hungary done at Budapest on 25 October 1995 [1997] ATS 14	25/4/1997

13.	<i>Extradition (Republic Of Indonesia) Regulations</i>	
	Extradition treaty between Australia and the Republic of Indonesia done at Jakarta on 22 April 1992 [1995]ATS 7	21/1/1995
14.	<i>Extradition (Ireland) Regulations</i>	
	Treaty on extradition between Australia and Ireland done at Dublin on 2 September 1985 [1989] ATS 9	29/3/1989
15.	<i>Extradition (State Of Israel) Regulations</i>	
	Treaty between Australia and the State of Israel concerning extradition done at Jerusalem on 4 December 1975 [1976] ATS 2	3/1/1976
16.	<i>Extradition (Republic of Italy) Regulations</i>	
	Treaty of extradition between Australia and the Republic of Italy done at Milan on 26 August 1985 [1990]ATS 20	1/8/1990
17.	<i>Extradition (Republic Of Korea) Regulations</i>	
	Treaty on extradition between Australia and the Republic of Korea done at Seoul on 5 September 1990 [1991] ATS 3	16/1/1991
18.	<i>Extradition (Latvia) Regulations 2004</i>	
	Treaty on extradition between Australia and the Republic of Latvia done at Riga on 14 July 2000 [2005] ATS 3	16/1/2005
19.	<i>Extradition (Grand Duchy Of Luxembourg) Regulations</i>	
	Treaty on extradition between Australia and the Grand Duchy of Luxembourg done at Luxembourg on 23 April 1987 [1988] ATS 16	12/8/1988
20.	<i>Extradition (Malaysia) Regulations 2006</i>	
	Treaty Between the Government of Australia and the Government of Malaysia on Extradition done at Putrajaya on 15 November 2005 [2006] ATS 20	28/12/2006
	Exchange of Notes Between the Government of Australia and the Government of Malaysia on the Treaty on Extradition, Kuala Lumpur on 7 December 2005	28/12/2006

21.	<i>Extradition (United Mexican States) Regulations (Mexico)</i>	
	Treaty on extradition between Australia and the United Mexican States done at Canberra on 22 June 1990 [1991] ATS 13	27/3/1991
22.	<i>Extradition (Principality of Monaco) Regulations</i>	
	Treaty on extradition between Australia and the Government of his Serene Highness the Prince of Monaco done at Monaco on 19 October 1988 [1990] ATS 22	1/8/1990
23.	<i>Extradition (Kingdom Of The Netherlands) Regulations</i>	
	Treaty on extradition between Australia and the Kingdom of the Netherlands done at the Hague on 5 September 1985 [1988] ATS 3	1/2/1988
24.	<i>Extradition (Norway) Regulations</i>	
	Treaty between Australia and Norway concerning extradition done at Oslo on 9 September 1985 [1987] ATS 3	2/3/1987
25.	<i>Extradition (Republic of Paraguay) Regs 1998</i>	
	Treaty on extradition between Australia and the Republic of Paraguay done at Buenos Aires on 30 December 1997 [1999] ATS 7	30/5/1999
26.	<i>Extradition (Republic Of The Philippines) Regulations</i>	
	Treaty on extradition between Australia and the Republic of the Philippines done at Manila on 7 March 1988 [1991] ATS 5	18/1/1991
27.	<i>Extradition (Poland) Regulations 1999</i>	
	Treaty between Australia and the Republic of Poland on extradition done at Canberra on 3 June 1998 [1999] ATS 23	2/12/1999
28.	<i>Extradition (Republic Of Portugal) Regulations</i>	
	Treaty on extradition between Australia and the Republic of Portugal done at Lisbon on 21 April 1987 [1988] ATS 28	29/8/1988

29.	<i>Extradition (South Africa) Regulations 2001</i>	
	Treaty on extradition between Australia and the Republic of South Africa done at Canberra on 9 December 1998 [2001] ATS 19	1/8/2001
30.	<i>Extradition (Spain) Regulations</i>	
	Treaty on extradition between Australia and Spain done at Madrid on 22 April 1987 [1988] ATS 9	5/5/1988
31.	<i>Extradition (Sweden) Regulations</i>	
	Treaty on extradition between Australia and Sweden done at Stockholm on 20 March 1973 [1974] ATS 4	10/3/1974
	Protocol between Australia and Sweden amending the treaty concerning extradition done at Stockholm on 20 March 1973, done at Stockholm on 6 September 1985 [1985] ATS 24	6/10/1985
	Protocol between Australia and Sweden further amending the treaty concerning extradition done at Stockholm on 20 March 1973, done at Canberra on 11 May 1989 [1989] ATS 13	11/5/1989
32.	<i>Extradition (Swiss Confederation) Regulations</i>	
	Treaty between Australia and Switzerland on Extradition done at Sydney on 29 July 1988 [1991] ATS 2	1/1/1991
33.	<i>Extradition (Turkey) Regulations 2003</i>	
	Treaty on extradition between Australia and the Republic of Turkey done at Canberra on 3 March 1994 [2003] ATS 24	16/11/2003
	Exchange of notes in relation to the treaty on extradition, constituting an agreement between the Government of Australia and the Government of the Republic of Turkey done at Ankara on 27 March 1995 [2003] ATS 24	16/11/2003

34.	<i>Extradition (United States of America) Regulations</i>	
	Treaty on extradition between Australia and the United States of America done at Washington on 14 May 1974 [1976] ATS 10	8/5/1976
	Protocol amending the treaty on extradition between Australia and the United States of America of May 14, 1974, done at Seoul on 4 September 1990 [1992] ATS 43	4/9/1990
35.	<i>Extradition (Republic Of Venezuela) Regulations</i>	
	Treaty on Extradition between Australia and the Republic of Venezuela done at Caracas on 11 October 1988 [1993] ATS 35	19/12/1993